

## CCRB INVESTIGATIVE RECOMMENDATION

|  |                                     |                           |  |                                    |                                 |
|--|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Cheyanne Ralph                    | Team:<br>Squad #16                  | CCRB Case #:<br>201704607 | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |                                     |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 06/07/2017 12:23 AM | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>108          | 18 Mo. SOL<br>12/7/2018                                | EO SOL<br>12/7/2018                |                                 |
| Date/Time CV Reported<br>Fri, 06/09/2017 10:54 AM  | CV Reported At:<br>CCRB             | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Fri, 06/09/2017 10:54 AM |                                    |                                 |

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |

| Subject Officer(s)        | Shield | TaxID  | Command |
|---------------------------|--------|--------|---------|
| 1. POM Nicholas Difinizio | 14530  | 956597 | 108 PCT |

| Witness Officer(s)  | Shield No | Tax No | Cmd Name |
|---------------------|-----------|--------|----------|
| 1. POM Ryan Doherty | 19662     | 951683 | 108 PCT  |

| Officer(s)               | Allegation   | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A.POM Nicholas Difinizio | Abuse: Police Officer Nicholas Difinizio threatened to arrest § 87(2)(b) | § 87(2)(b)                  |
| B.POM Nicholas Difinizio | Abuse: Police Officer Nicholas Difinizio entered § 87(2)(b) in Queens.   | § 87(2)(b)                  |

### **Case Summary**

On June 9, 2017, § 87(2)(b) filed this complaint via telephone with the Civilian Complaint Review Board on behalf of his wife, § 87(2)(b). § 87(2)(b) is listed as a victim of the entry because he resides at the location. However, § 87(2)(b) did not witness any of the allegations.

On June 7, 2017, at approximately 12:23 a.m., PO Nicholas Difinizio and PO Ryan Doherty of the 108<sup>th</sup> Precinct responded to a report of an illegal eviction at § 87(2)(b) in Queens (Board Review 01). The following was alleged:

PO Nicholas Difinizio threatened to arrest § 87(2)(b) § 87(2)(b) § 87(2)(b) (Allegation A). PO Nicholas Difinizio entered § 87(2)(b) § 87(2)(b), in Queens (Allegation B). No arrest or summonses were issued.

There was no video footage of this incident.

### **Mediation, Civil and Criminal Histories**

- This case was eligible for mediation but mediation was rejected by § 87(2)(b) and § 87(2)(b) § 87(2)(b).
- As of July 19, 2017, no Notice of Claim has been filed by § 87(2)(b) or § 87(2)(b) in regards to this incident (Board Review 02).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB case filed by or involving § 87(2)(b) (Board Review 05) and the first involving § 87(2)(b) (Board Review 06).
- PO Nicholas Difinizio has been a member of service for three years and this is his first CCRB complaint.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- During her interview with the CCRB, § 87(2)(b) (Board Review 07) stated that when the officers arrived she informed them that § 87(2)(b) had gone to the Precinct stationhouse and had been informed by an unknown officer that they could change the locks to their apartment after 30 days, an officer replied, “You can not do that. I can handcuff you if you do not let her in.” PO Difinizio and PO Doherty admitted in their CCRB testimony (Board Review 08 and Board Review 09) that they responded to the incident. § 87(2)(b) said that when she attempted to close her apartment door so that she could call § 87(2)(b) an officer extended his arm, placed his foot in the doorway, and said, “I am going to put my foot in door so it will not close.” On July 13, 2017, PO Difinizio (Board Review 08) stated to the CCRB that when he responds to homes, he usually places his foot in the doorway to prevent civilians from closing the door when he speaks with them. § 87(2)(g)

**Allegation A –Abuse of Authority: Police Officer Nicholas Difinizio threatened to arrest**

§ 87(2)(b)

§ 87(2)(b) (Board Review 07) stated that on May 4, 2017, § 87(2)(b) went to an unknown Precinct stationhouse and was informed by an officer that if their roommate, § 87(2)(b) was gone for more than 30 days, they could change the locks of their apartment. She alleged that when she tried to explain this information to PO Difinizio and PO Doherty, PO Difinizio said, “You can not do that. I can handcuff you if you do not let her in.” Mrs. Eyas-§ 87(2)(b) did not refuse to let § 87(2)(b) into the apartment before PO Difinizio said this.

§ 87(2)(b) (Board Review 10) who provided a brief telephone statement on June 21, 2017, but did not provide a sworn statement, stated that she heard an officer tell § 87(2)(b) that she could be handcuffed. § 87(2)(b) in response said that she did not want to go to jail and asked to call her husband.

PO Difinizio (Board Review 11) could not recall saying, “If you do not let her in, I will handcuff you.” He stated to the CCRB that an owner can not change the locks after thirty days and could be arrested if officers were able to establish that the owner changed the locks and/or went against a court order which would be considered an illegal eviction.

Patrol Guide Procedure 214-12 (Board Review 13 ) states that “it is unlawful for any person to evict or attempt to evict an occupant by changing the lock on such entrance door without supplying the occupant with a key unless a warrant of eviction or government order to vacate has been executed.” It further states that “the protective provisions of this law apply when an individual has lawfully occupied a dwelling unit for thirty or more consecutive days.” An officer can effect an arrest when the violator refuses to permit occupant to re-enter or who through physical obstruction prevents the occupant from re-entering.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B- Abuse of Authority: Police Officer Nicholas Difinizio entered § 87(2)(b), in Queens.**

§ 87(2)(b) (Board Review 07) said that when the officer threatened to arrest her, she became afraid and did not say thing in response. It was then an officer asked if she wanted to call her husband and § 87(2)(b) confirmed that she did. As § 87(2)(b) was about to close the door so that she could make the phone call, PO Difinizio extended his arm, placed his

foot in the door and said, “I am going to put my foot in the door so it will not close.” PO Difinizio placed one leg in the door and had his opposite leg in the hallway. § 87(2)(b) said, “Okay” and went to call her husband.

On July 13, 2017, PO Difinizio was interviewed at the CCRB (Board Review 08). When asked if he placed his foot in the door frame of § 87(2)(b)'s apartment door to prevent her from closing the door to call her husband, PO Difinizio stated, “I might have. When I respond to incidents, I usually put my foot in the door because if the person closes the door, we can not speak with them.” Because the audio file of PO Difinizio’s interview was corrupted, and could not be retrieved, he was re-interviewed on July 25, 2017 (Board Review 11). When asked about his previous statement that he usually places his foot in the door, PO Difinizio stated, “I do not do that with every job, only if someone goes to close the door before we are finish discussing what’s going on, then yes, I put my foot in the door to stop the person from closing the door. I never tried to walk into someone’s house to see anything.” When ask how far into the apartment he places his foot, PO Difinizio stated, “Just enough so the door won’t close. Like if you were holding the door with your foot.” However, he could not recall doing that specifically for this incident.

People v. Reese 799 N.Y.S.2d (Board Review 12) states that the Fourth Amendment draws a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Squad: 16

|               |                 |       |       |
|---------------|-----------------|-------|-------|
| Investigator: | _____           | _____ | _____ |
|               | Signature       | Print | Date  |
| Squad Leader: | _____           | _____ | _____ |
|               | Title/Signature | Print | Date  |

Reviewer:

\_\_\_\_\_  
Title/Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Date